

B-19



STATE OF NEW JERSEY

In the Matter of Robert Bechtel, *et al*,
Fire Fighter (M2501M), Atlantic City

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2014-2885, 2014-
2637, and 2014-2645

List Removal Appeals

ISSUED: SEP 19 2014 (SLK)

Robert Bechtel, Christopher Fry, and Peter McCabe, Jr. appeal the attached determinations of the Division of Classification and Personnel Management (CPM) upholding the removal of their names from the eligible list for Fire Fighter (M2501M), Atlantic City, on the basis of residing outside the residency scope. These appeals have been consolidated due to common issues presented.

By way of background, the appellants appeared on certification OL130361 that was issued to the appointing authority on March 18, 2013. The certification contained 40 names, including the appellants, and 14 applicants were appointed. The list expires on December 12, 2014. In disposing of the certification, the appointing authority requested the removal of the appellants' names, contending that they failed to maintain continuous residency in Atlantic City between the examination closing date of March 31, 2010 through the date that they were considered for appointment.

With regard to Mr. Bechtel, the appointing authority's Background Investigation Report revealed that his reported address in Atlantic City appeared to be in a significant state of disrepair and not inhabited. When the investigator advised Mr. Bechtel that his reported address appeared to be uninhabitable and asked him where he was living, he responded that he had been displaced by Hurricane Sandy since October 2012 and had been staying at a variety of friends' houses but gave no particular place. Mr. Bechtel did not disclose in his application that he had been displaced since October 2012 due to Hurricane Sandy, he did not

update the appointing authority where he had been living since October 2012, nor did he provide an explanation as to why he did not disclose this information. Additionally, the applicant reported that he originally had resided and paid rent at an Anchorage Court address from May 2009 to December 2011 and then moved to Dover Avenue in December 2011; however, he did not provide any proof of payment of rent. The appellant submitted certifications from individuals on behalf of his reported residency, but he did not supplement his file by submitting bank statements, credit card statements, cell phone or utility bill account statements, or executed canceled checks with proof of payment of rent through the years. The investigator found that his 2009 Federal Tax Return and Homestead Rebate Application for Tenants indicated his address to be in Margate, his 2010 Federal Tax Return, W-2, and State Unemployment Form 1099-G indicated his address to be in Margate, and his 2011 W-2s also listed his address as Margate. Moreover, records generated by the Atlantic City Police from the State Motor Vehicle Commission (MVC) indicated that he did not establish residency within Atlantic City until November 2011. Consequently, it was determined Mr. Bechtel had not met the continuous residency requirement.

In reference to Mr. Fry, the appointing authority's Background Investigation Report indicated that Mr. Fry maintained that he had been continuously living in his mother's home since January 2010. However, an unannounced visit to the reported address and investigation revealed that that there were only one small bedroom and that there was no bedroom for Mr. Fry's step-daughter nor were there any children's toys or child care accessories on the premise. Additionally, his 2010 Federal Tax Return listed his address as Northfield where he filed jointly with his wife and listed the aforementioned child as his daughter, as did his 2010 W-2 and his 2011 Federal Tax Return and W-2s. Nevertheless, his 2012 Federal Tax Return and W-2s represented his 2012 address as the reported address in Atlantic City. Also, his record of address within the State as prepared by the Atlantic City Police did not reflect that he resided in Atlantic City until April 2011. In this regard, Mr. Fry indicated that his vehicle and license were listed at the Northfield address for cost convenience. The investigator did locate a neighbor of the reported Atlantic City address who believed that Mr. Fry lived at the reported address for several years. Therefore, the investigator concluded that Mr. Fry did not meet the residency requirements.

With respect to Mr. McCabe, the appointing authority's Background Investigation Report revealed that his grandmother indicated that he resided at her house, the reported address, since January 2008. The investigator visited his reported bedroom where there was a full size bed on one side and a mattress on the floor on the other side. It was indicated that he shared the room with his cousin. The investigator further discovered a Bonefish Grill uniform within the room which is where he had indicated he had worked. The investigator noted that he had certified to the MVC that he resided in Galloway when his driver's license was

reissued in August 2010. Also, his address history that was provided by the Atlantic City Police using MVC records indicated that he first moved to Atlantic City in March 2010, then moved to Galloway in June 2010, and then moved back to Atlantic City in November 2011. Mr. McCabe advised the investigator that some of his tax returns would come back to a different address because they were prepared by his parents. In a supplemental submission to the investigator, he explained that since his father paid for his fine for the restoration of his New Jersey Driver's License that was suspended in January 2010, his license was changed to the address of the residence of the person who paid the fine. Upon renewal of his driver's license in August 2010, he had certified that his place of residence was in Galloway. Mr. McCabe also provided a letter from an insurance agency which stated that it has insured him since January 2011, that his address has been the Atlantic City address during that time period, and that the address was changed to his father's address in Galloway since he was making the payments for his suspension of his license. He also submitted a driver's license suspension notice that listed his address as being in Atlantic City and that his license was restored in August 2010 to a Galloway address. His Motor Vehicle driving records as prepared by the Atlantic City Police in April 2013 indicated that he moved to Atlantic City in March 2010, and then moved to Galloway in June 2011, and then he moved back to Atlantic City in November 2011. Therefore, it was determined that Mr. McCabe had not met the residency requirements.

The appellants appealed the matter of the removal of their names to CPM, which found that the appointing authority supported its request to remove their names from the subject list.

On appeal, Mr. Bechtel submits several certifications from various individuals who certify that he lives in Atlantic City. He also indicates that he had submitted a lease with his name on it with his initial appeal with an Anchorage Court address. After reviewing the Background Report, Mr. Bechtel further states that he provided the investigator with over ten affidavits that indicated that he lived in Atlantic City since May 2009. He highlights that the investigator only addressed two of the affidavits in his report and that he did not include affidavits from reputable members of the Atlantic City community such as Fire Fighters, Police Officers, a lawyer, and a local business owner. He maintains that the reason he was not home when the investigator made two unannounced visits to his residence was that his home in Atlantic City was completely destroyed due to Hurricane Sandy. He reiterates that each witness interviewed by the investigator confirmed that he resided in Atlantic City and requests that his name be restored to the eligible list.

Mr. Fry submits his 2010 and 2011 W-2s as well as an old receipt for construction as proof of his residency in Atlantic City. He presents that the only reason his taxes were filed indicating that his address was in Northfield was

because his wife filed Head of Household on their taxes and she was the sole owner of the Northfield property. Additionally, their accountant advised them that if they were filing jointly, then they had to file them under the Northfield address. He asserts that the address listed on his tax returns should have no bearing on his residency in Atlantic City. He highlights that his mother and he have owned the Atlantic City house for almost 10 years and that he has been a resident there for almost six years.

Mr. McCabe, represented by James P. Swift, Esq., asserts that he has been a continuous resident of Atlantic City since 2008 and provides various documents between 2008 and 2013 to support his claim. He highlights that the appointing authority's Background Report incorrectly lists his Trenton Avenue address and that this mistake is an example of the sloppy and haphazard methods used to make a determination of his residence status. He comments that the report points out that the landlord verification form was not signed and explains that the form requested signatures from an Atlantic City employee. Since neither his grandmother, who owns the house, nor himself are Atlantic City employees, they did not sign it. Instead, a notary has indicated that his grandmother and he live at the Atlantic City residence and she notarized the form. He maintains that he met with an Atlantic City Battalion Chief before handing him his application and claims that he was informed that everything was in order. Regarding the registered address of his driver's license, his father lives in Galloway. After he had his motor vehicle issue in 2010, he presents he did not have a checking account. Therefore, he explains that his father made the payments to MVC on his behalf from his Galloway address. Thereafter, when the MVC restored his license, it mistakenly restored his driver's license address to the Galloway address.

CONCLUSION

N.J.A.C. 4A:4-2.11(e)1 provides that when an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment.

N.J.A.C. 4A:4-2.11(c) provides that where residency requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives

elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner, a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

N.J.A.C. 4A:4-2.11(h) provides that an applicant seeking to appeal a residency determination shall have the burden of proving his or her residency.

In this matter, the candidates needed to maintain continuous residence in Atlantic City from March 31, 2010, the closing date of the subject announcement, to when they were considered for appointment. Mr. Bechtel's 2009 Federal Income Tax Returns and 2010 Federal Income Tax Returns, W-2 statements, and 1099-G for State Unemployment all list his address as Margate. Mr. Fry's 2010 and 2011 Federal Income Tax Returns and W-2 statements list his address as Northfield. Mr. McCabe did not submit his 2010 and 2011 Federal Income Tax Returns. Mr. Bechtel has not provided any explanation as to why his tax returns and other tax documents in 2009 and 2010 list his residence as Margate if he lived in Atlantic City. Mr. McCabe does not provide any explanation on appeal regarding his tax returns; however, when the investigator asked for his tax returns, he did not provide them, and instead replied to the investigator that some of his tax returns would come back to a different address because they were prepared by his parents. Mr. Fry explains that his taxes were filed as listing his address as Northfield because his wife, who filed as Head of Household, was the sole owner of a house and their accountant said that if they were filing jointly, they had to file them under the Northfield address. The Commission notes that a Federal Tax Return asks for the tax filer's address and then requires the filer to sign and date it. Further, per the tax return, the signatory represents, "Under penalties of perjury, I declare that I have examined this return and accompanying schedules, and to the best of my knowledge and belief, they are true, correct, and complete." In other words, while all the appellants want to now assert that they have continuously maintained their residence in Atlantic City during the required period, including submitting sworn statements or offering to give sworn testimony, all of the appellants, under penalties of perjury, as of a specific date during the required residency period for

the subject examination, had the opportunity to indicate that they were residents of Atlantic City, but chose not to do so on their federal tax returns. Additionally, with respect to Mr. McCabe, regardless of who prepared the return, the tax filer is responsible for the accuracy of his or her own tax return. In reference to Mr. Fry, his 2010 and 2011 Federal Tax Returns were filed as Married Filing Jointly and not that his wife filed as Head of Household as he states. His prior W-2s also indicated that he lived in Northfield during the required time period.

Moreover, Mr. Bechtel never reported his Atlantic City address as uninhabitable or that he had been displaced by Hurricane Sandy since October 2012 when he was filling out an application in early April 2013. Additionally, Mr. Bechtel did not provide proofs of his residency in Atlantic City including bank statements, credit card statements, cell phone or utility bills, canceled checks as proof of rent or other proofs. It was only in 2011 that his Federal Tax Return and Motor Vehicle record indicated that he had an Atlantic City address.

Furthermore, Mr. Fry has not indicated the he has lived separately from his wife and daughter during the required residency period. The investigation revealed during an unannounced visit to the reported address that the house was a small one-bedroom house. Mr. Fry's mother is the owner of the house. The bedroom had a small bed and there was no bedroom for his daughter, children's toys or accessories. Therefore, given this background and his tax documents as stated above, it is not plausible that he continuously lived in the reported address with his wife and his daughter during the required residency period.

Additionally, Mr. McCabe contends that the MVC made a mistake when it restored his driver's license in August 2010 and listed his address as being in Galloway, purportedly because his father made the payments for the fines from his Galloway address. However, the investigation revealed that appellant went to the office of the MVC and certified in person when he renewed his license on August 24, 2010 that his residence was in Galloway. Also, if his address on his driver's license was incorrect, the appellant had one week to correct it, although per his Motor Vehicle record, he did not change his address to Atlantic City until November 2011. *See In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) (Commission found appellant who claimed he leased a Newark Address on April 12, 2006, but did not change his motor vehicle record until November 7, 2007 was not a resident since N.J.S.A. 39:3-36 requires a motorist to report an address change within one week of move).

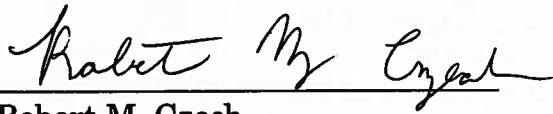
Accordingly, the appellants have not met their burdens of proof in these matters and the appointing authority has shown sufficient cause for removing their names from the Fire Fighter (M2501M), Atlantic City eligible list.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17th DAY OF SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachments

c: Robert Bechtel
Christopher Fry
Peter McCabe, Jr.
James Swift, Esq.
Arthur Liston
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

April 11, 2014

Robert Bechtel
311 N. Dover Ave
Atlantic City, NJ 08401

Title: Fire Fighter
Jurisdiction: Atlantic City
Symbol: M2501M
Certification No: OL130361
Certification Date: 03/18/13

Initial Determination: Removed - R4 – Outside of Residency Scope

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement up to and including the date of appointment.

In support of its decision, the Appointing Authority provided a copy of the Candidate Investigation Report. Included in the investigation report was a copy of the first page of your 2009 and 2010 U.S. Individual Tax Returns (Form 1040). The address on these forms is 423 N. Exeter Ave, Margate, NJ 08402.

Based on this information, the Appointing Authority states that you did not maintain continuous residency in Atlantic City between the examination closing date of March 31, 2010 through the date you were considered for appointment.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and your appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.


Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947,

C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,


Elliott Cohen,
Local Placement Services

c: Donald Guardian

Donald Guardian
City Of Atlantic City
1301 Bacharach Blvd
Atlantic City, NJ 08401



Chris Christie
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April 11, 2014

Cristopher Fry
614 Wisteria Rd
Atlantic City, NJ 08401

Title: Fire Fighter
Jurisdiction: Atlantic City
Symbol: M2501M
Certification No: OL130361
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In support of its decision, the Appointing Authority provided a copy of the Candidate Investigation Report. Included in the investigation report was a copy of the first page of your 2010 and 2011 U.S. Individual Tax Returns (Form 1040). The address on these forms is 224 W. Glencove Ave, Northfield, NJ 08225.

Based on this information, the Appointing Authority states that you did not maintain continuous residency in Atlantic City between the examination closing date of March 31, 2010 through the date you were considered for appointment.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and your appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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Sincerely,
For the Director,

A handwritten signature in cursive script, appearing to read "Elliott Cohen", followed by a horizontal line.

Elliott Cohen,
Local Placement Services

c: Donald Guardian

Donald Guardian
City Of Atlantic City
1301 Bacharach Blvd
Atlantic City, NJ 08401



Chris Christie
Governor
Kim Guadagno
Lt. Governor

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P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

April 11, 2014

James P. Swift, Esquire
Swift Law Firm
1335 Tilton Road
Northfield, NJ 08225

RE: Removal of Name from Eligible List – Peter J. McCabe, Jr.

Title: Fire Fighter
Jurisdiction: Atlantic City
Symbol: M2501M
Certification No: OL130361
Certification Date: 03/18/13

Dear Mr. Swift:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement March 31, 2010 up to and including the date of appointment.

In support of its decision, the Appointing Authority provided a copy of the Candidate Investigation Report. Included in the investigation report was a copy of Mr. McCabe's New Jersey Auto Driver License, which indicates that Mr. McCabe had established 313 E. Key Drive, Gallaway (sic), NJ, 08205-4120 as his residential address at the time of the issuance of the license on August 24, 2010. The address change sticker on the reverse of the license indicates that your client did not change his address to 562 N. Trenton Ave, Atlantic City until the 333rd day of 2011 (November 29, 2011).

Among the standards used to determine residency are the following paragraphs in 4A:4-2.11 (Residence standards):

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable;

Based on this information, the Appointing Authority states that your client did not maintain continuous residency in Atlantic City.

Documentation submitted by, or on behalf of, Mr. McCabe does not include any official government documentation which establishes that your client had maintained continuous residency in Atlantic City between March 31, 2010 and the issuance of the certification.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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Sincerely,

For the Director,



Elliott Cohen,
Local Placement Services

c: Donald Guardian

Donald Guardian
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Atlantic City, NJ 08401

